

15148 #

ITEL

RECORDATION NO. 15148 Filed & Recorded

Istel Rail Corporation

55 Francisco Street
San Francisco, California 94133
(415) 984-4000

December 2, 1986

DEC 12 1986 11:50 AM
INTERSTATE COMMERCE COMMISSION

6-348A042
No. DEC 12 1986
Date
Fee \$ 20.00

Hon. Noretta R. McGee, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

ICC Washington, D.C.

Re: Lease Agreement dated October 15, 1986 between Istel Rail Corporation and
Hartford and Slocomb Railroad Company

Dear Ms. McGee:

On behalf of Istel Rail Corporation, the above instrument, in four (4) counter-
parts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Sec.
11303(a), along with a check in the amount of \$20 covering the recordation
fees.

Please record this Agreement under a new recordation number and cross-index
same with the Equipment Trust Agreement dated January 1, 1982 between Istel
Rail Corporation and First Security Bank of Utah, N.A., which was filed with
the I.C.C. on September 20, 1983 and given Recordation No. 14165.

The names and addresses of the parties to the aforementioned instrument are
listed as follows:

Istel Rail Corporation (Less^{or})
55 Francisco Street
San Francisco, California 94133

Hartford and Slocomb Railroad Company (Lessee)
P.O. Box 2243
Dothan, Alabama 36302

The equipment covered by this Agreement are fifty-two (52) 50', 100-ton Plate
C boxcars bearing reporting marks HS 77198 through HS 77249.

Please return to the undersigned the stamped counterparts not required for
filing purposes, along with the fee receipt and a letter from the I.C.C.
acknowledging this filing.

Very truly yours,

Josie Villaflora

Josie Villaflora
Legal Assistant

Encl.

cc: Howard L. Chabner, Esq.
Ginny Hanger

THIS INSTRUMENT IS SUBJECT TO
A SECURITY INTEREST IN FAVOR
OF HELLER FINANCIAL, INC.
UNDER THE HELLER FINANCIAL,
INC. LOAN AND SECURITY
AGREEMENT WITH ITEL RAIL
CORPORATION
DATED AS OF SEPTEMBER 30, 1986

11/18/86

RECORDATION No. 1 5148 Filed & Recorded

DEC 12 1986 11 50 AM

LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT (the "Agreement") is made as of this 15th day of October, 1986, between ITEL RAIL CORPORATION, a Delaware corporation, 55 Francisco Street, San Francisco, California, 94133, as the lessor ("Lessor") and Hartford and Slocumb Railroad Company, an Alabama corporation, Post Office Box 2243, Dothan, Alabama, 36302 as the lessee ("Lessee").

1. Scope of Agreement

- A. Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, upon the terms and conditions set forth herein, a number of items of equipment of the number, type, construction and other description set forth in any lease schedules attached hereto and executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Equipment Schedule or Equipment Schedules executed herewith and any additional Equipment Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars" and individually a "Car."
- B. It is the intent of the parties to this Agreement that Lessor shall at all times be and remain the lessor of all Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

- A. This Agreement shall remain in full force until it is terminated as to all of the Cars as provided herein. The term of the Agreement with respect to each Car described on each Schedule shall commence at 12:01 a.m. on the date and at the location that such Car is remarked pursuant to Subsection 3.A., and shall expire as to all of the Cars described on each Schedule, fifteen (15) years from the date on which the first Car on such Schedule was remarked (the "Initial Term").
- B. If this Agreement has not been terminated early and no unremedied default has occurred pursuant to Section 9, the Agreement shall automatically be extended for not more than six (6) consecutive periods of twelve (12) months each (the "Extended Term(s)") with respect to all of the Cars described on each Schedule, provided, however, that Lessor or Lessee may terminate this Agreement at the end of the Initial Term or any Extended Term as to all, but not fewer than all, of the Cars on the Schedules by written notice delivered to the other not less than twelve (12) months prior to the end of the Initial Term or any Extended Term.

ASSIGNED TO FIRST SECURITY BANK
OF UTAH, N.A., TRUSTEE UNDER
A LEASE ASSIGNMENT

3. Supply Provisions

- A. Lessee hereby approves the specifications of the Cars delivered by Lessor. Lessor shall, at Lessee's expense, remark the Cars with the railroad markings of Lessee in compliance with all applicable regulations. Each Car shall be deemed delivered and subject to the terms and provisions of this Agreement at 12:01 a.m. on the date and at the location such Car is remarked ("Delivery"). Notwithstanding that Lessee may not have immediate physical possession of the Cars leased hereunder, Lessee agrees to pay the rent set forth in this Agreement. To move the Cars to Lessee's railroad line and to ensure optimal use of the Cars after the Initial Loading (as hereinafter defined), Lessor agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Lessor, to assist in the issuance of movement orders with respect to such Cars to other railroad lines in accordance with Interstate Commerce Commission ("ICC") and Association of American Railroads ("AAR") interchange rules adopted by the AAR Mechanical Division, Operations and Maintenance Department ("Interchange Rules"). If Lessor incurs expenses in having other railroads move Cars in accordance with this Section with Lessee's request or approval, except for any expenses incurred in the initial delivery of such Cars to Lessee's railroad line pursuant to this Section, Lessee shall reimburse Lessor for such expenses within ten (10) days of receipt of an invoice from Lessor.
- B. Lessee shall load the Cars leased from Lessor prior to loading any boxcars leased by or assigned to Lessee from other parties subsequent to the date of this Agreement, purchased by Lessee subsequent to the date of this Agreement, or interchanged from other railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.
- C. Additional Cars shall be leased from Lessor by Lessee only upon the mutual agreement of the parties. During the term of this Agreement, Lessor may, at its expense, replace any or all of the Cars with similar boxcars upon prior written notice from Lessor to Lessee; provided, however, that any such replacement shall not prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.

4. Record Keeping

- A. Lessor shall, at its expense and with Lessee's assistance, prepare and file, with respect to the Cars, all documents relating to the registration, maintenance and record keeping functions normally performed by a railroad with respect to railroad equipment of the type subject to this Agreement. Such matters shall include, but are not limited to: (i) preparation of appropriate AAR interchange agreements with respect to the Cars; (ii) registration of the Cars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (iii) preparation of any reports as may be required from time to time by the ICC and any other

regulatory agencies with respect to the Cars. Lessee hereby authorizes Lessor to be the subscriber to the car hire exchange tape, Train 62 Junction Advices, and the Train II (65, 67 and 80) Location Advices with respect to the Cars and agrees to execute any documents necessary for such authorization.

- B.** Lessor shall perform all record keeping functions relating to the use of the Cars by Lessee and other railroads, including but not limited to, car hire reconciliation, collection and receipt of Revenues (as defined in Section 7 hereinbelow) from other railroad companies, records pertaining to maintenance and repair, and billing in accordance with the Interchange Rules. Immediately upon receipt from other railroads of any Revenues in the form of a draft, check or other instrument payable to Lessee, Lessor shall be entitled to endorse and deposit such draft, check or other instrument into Lessor's account and to retain such Revenues as set forth in Subsection 7.D. All record keeping performed by Lessor hereunder and all records of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Lessor in a form suitable for reasonable inspection by Lessee from time to time during Lessor's regular business hours.
- C.** Upon Lessor's reasonable request, Lessee shall supply Lessor with daily telephone reports of the number of Cars in Lessee's possession or control. Lessee shall, within ten (10) days after the close of each calendar month, supply Lessor with copies of Lessee's interchange records with respect to the Cars interchanged to and from Lessee's railroad line. Upon Lessor's reasonable request, Lessee shall promptly provide Lessor with records of Lessee's car hire payables. In the event Lessee fails to provide Lessor with records of car hire payables, and as a result, a user or handling railroad refuses to pay any Revenues owed, Lessee shall, within ten (10) days after Lessor's request, pay to Lessor such unpaid Revenues. Lessor has the right to offset against Lessee's revenue sharing portion set forth in Subsection 7.C., any sums arising out of this Agreement which are owed by Lessee to Lessor but which remain unpaid.
- D.** If Lessee acquires or leases or has acquired or leased additional equipment bearing the reporting marks of Lessee from a party other than Lessor ("Other Equipment"), Lessor shall perform car hire accounting for the Other Equipment. Lessor and Lessee shall enter into a car hire service agreement ("Car Hire Agreement") governing Lessor's performance of car hire accounting for the Other Equipment. Under such Car Hire Agreement, Lessor shall, on behalf of Lessee, receive car hire rental and other payments relating to the use and handling of the Other Equipment by other railroads ("Funds") and shall deposit the Funds into an Agency Bank Account for the purpose of segregating the Funds from the Revenues (as defined in Section 7 hereinbelow) relating to the Cars so as to ensure that the interests of both Lessor and Lessee are protected. Upon entering into such Car Hire Agreement, Lessee shall pay Lessor on a monthly basis a fee which is mutually agreeable to Lessor and Lessee.

5. Maintenance, Tax and Insurance

- A.** Except as otherwise provided herein, Lessor shall, at its expense, perform or have performed all inspections of, maintenance and repairs to, and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules, provided, however, that such repair, maintenance and servicing shall be performed at Lessee's expense in the event it was occasioned by the fault of Lessee, or arises in those instances in which the Interchange Rules would assign responsibility to Lessee for the loss, damage, destruction or liability requiring such repair, maintenance or servicing. Lessee shall, at its expense, inspect all Cars interchanged to Lessee to insure that such Cars are in good working order and condition and Lessee shall be liable to Lessor for any repairs required for damage not noted at the time of interchange. Lessee shall use its best efforts to minimize any damages to the Cars which may be caused by any shipper. With respect to the Cars, any repairs performed by Lessee at Lessor's expense shall be at a labor rate not to exceed the prevailing AAR Labor Rate unless a different labor rate is mutually agreed upon in writing by the parties hereto.
- B.** Lessor shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules. Lessee may make running repairs to facilitate continued immediate use of each Car, but shall not otherwise make any repairs, alterations, improvements, or additions to any Car without Lessor's prior written consent. Lessee shall be liable to Lessor for any revenues lost due to any unauthorized repair, alteration, improvement or addition. Title to any alteration, improvement or addition shall be and remain with Lessor. Lessor shall have the right to perform certain Repairs, as hereinafter defined, to the Cars at a location on Lessee's property which is mutually agreeable to Lessor and Lessee. Repairs ("Repairs") shall be of the type that Lessor determines Lessee would not normally perform or of the type that Lessor determines would normally precipitate movement of such Cars to a repair facility. Lessor shall notify Lessee at least twenty-four (24) hours in advance of performing such Repairs.
- C.** As long as this Agreement shall remain in effect, Lessee shall be responsible for the Cars: (i) while in Lessee's possession or control; and (ii) in the same manner and under the same circumstances that Lessee is responsible under the Interchange Rules for similar equipment not owned by Lessee. Lessee shall, at all times while this Agreement is in effect, at its own expense, cause to be carried and maintained: (i) all-risk, physical loss or damage insurance with respect to the Cars while on Lessee's tracks or in Lessee's care, custody or control; and (ii) public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies as are satisfactory to the Lessor. All insurance shall be taken out in the name of Lessee and shall name Lessor and any assignee of Lessor as additional named insureds and shall also list Lessor and any assignee of Lessor as loss-payees on the insurance policies. Said

policies shall provide that Lessor and any assignee of Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. In the event that Lessee fails to place insurance, or said insurance expires, Lessor has the right to purchase insurance to protect all interested parties and Lessee shall pay the cost thereof. With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance ("Other Insurance") effected by, or for, the additional insureds. Lessee shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other Insurance. Any and all deductibles in the described policies shall be paid by the Lessee.

- D. Each policy obtained by Lessee pursuant to this Section shall be in accordance with the above terms and conditions, and such terms and conditions shall be set forth on the Certificate of Insurance provided to the Lessor pursuant to this Subsection. Lessee shall furnish to Lessor concurrently with execution hereof, and within thirty (30) days of receipt of a written request from Lessor, and at intervals of not more than twelve (12) calendar months from execution hereof, Certificates of Insurance evidencing the aforesaid insurance. Lessee shall provide Lessor a Certified Copy of each insurance policy upon written request. In the event that, and only with Lessor's written approval, Lessee shall be permitted to self-insure on any specified interests, the Lessee hereby warrants to place the Lessor in the same position as if the relating insurance had been effected.
- E. Lessor agrees to reimburse Lessee, within thirty (30) days from Lessor's receipt of the receipted copy of the paid tax bill, for all taxes actually paid in cash by the Lessee resulting from: 1) ad valorem tax assessments on the Cars; and 2) any assessment, levy or impost relating to each Car, the Agreement or the delivery of the Cars which remained unpaid as of the date of the delivery of the Cars to Lessee or which are assessed, levied or imposed during the term of this Agreement, except taxes on income imposed on Lessee, gross receipts or sales or use tax imposed on the mileage charges and car hire revenue or sale or lease of the Cars. Lessor and Lessee will comply with all state and local laws requiring filing of ad valorem tax returns associated with the Cars. Notwithstanding any portion of this Section, Lessor shall not be responsible for penalty or interest assessments resulting from Lessee's failure to comply with any regulation or statute of any taxing or assessing authority. Lessee shall forward to Lessor upon receipt all correspondence, notifications of proposed tax assessments and tax bills associated with any tax reimbursable by Lessor. Lessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Lessor shall assume full responsibility for all expenses, including legal fees, resulting from such contest.

6. Storage

During the Initial Term and any Extended Term(s), as long as there is sufficient room on Lessee's railroad tracks, Lessee shall, at its expense and if deemed necessary by Lessor, store the Cars on its railroad

tracks. In the event that Lessee's capacity to store any or all of the Cars on Lessee's railroad tracks is impaired at any time, then Lessee shall be responsible for the following with respect to each Car stored: (i) all reasonable transportation costs incurred to move the Cars to a storage location; (ii) all reasonable transportation costs incurred in removing the Cars from the storage location; and (iii) the actual costs incurred for the storage. If Lessor pays for any costs referred to in this Section, Lessee shall reimburse Lessor for such cost within ten (10) days from Lessee's receipt of Lessor's invoice. Lessor shall assist Lessee so as to minimize Lessee's exposure under this Section.

7. Rent

A.

B. Lessor shall receive all Revenues earned by each Car prior to its Delivery. Each Car delivered pursuant to Subsection 3.A. shall become subject to the rental calculation under Subsection 7.C. upon the Delivery of such Car.

C. Lessee agrees to pay the following rent to Lessor for the use of the Cars:

(i)

(ii)

- D. The calculations required in Subsection 7.C shall be made within five (5) months after the end of each calendar year ("Final Calculations"). However, Lessor shall, prior to making such calculations, retain the Revenues and other payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly year-to-date basis the approximate amounts owed under Subsection 7.C., Lessor shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis the amount due either party pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that within twenty (20) days following the Final Calculation, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.
- E. If, with respect to any calendar quarter or quarters, Revenues received by Lessor are less than the Base Rent, Lessor may, at any time, at its option and upon not less than ten (10) days prior written notice to Lessee, terminate this Agreement as to such Cars as Lessor shall determine; provided, however, that Lessee may, at its option, within ten (10) days of receipt of such notice from Lessor, void such termination notice by paying to Lessor an amount equal to the difference between actual Revenues for such calendar quarter or quarters and the Base Rent for such calendar quarter or quarters.
- F. If, subsequent to the Delivery, any Car remains on Lessee's railroad lines for more than seven (7) consecutive days, excluding those days such Car is undergoing servicing, repair or alteration as provided for in Section 5 unless such servicing, repair or alteration was occasioned by the fault of Lessee, Lessor may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Agreement as to such Car and take possession of such Car on Lessee's railroad tracks. If any such Car has remained on Lessee's railroad tracks for more than seven (7) consecutive days because Lessee has not given preference to the Cars as specified in Subsection 3.B., Lessee shall be liable for and remit to Lessor an amount equal to the Revenues which would have been generated if such Car had been in the physical possession and use of another railroad for the entire period during which such Car is on Lessee's railroad line.
- G. The parties agree that the rental rate in determining the charges to be paid for use of the Cars under this Agreement shall be the hourly and mileage car hire rates prescribed for excluded boxcars under the Commission's decision in ICC. Ex Parte No. 346, Sub-No. 19 served September 12, 1986, set forth in the Appendix to such decision in paragraph (c) (3) of 49 C.F.R. 1039.14. In the event that Lessor shall receive rentals for the use of such Cars during the term of this Agreement that are lower in amount than those specified for excluded boxcars as provided herein whether as a result of a bilateral agreement entered into by Lessee or otherwise, Lessee shall ensure that Lessor receives the amount of revenues such Cars would have earned under the rates for excluded boxcars as provided herein.

- H. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car will be removed from the rental calculations of this Agreement on the date car hire ceased as set forth in the aforementioned Rules 7 and 8. Lessor may, at its expense, replace any destroyed Car with similar equipment upon prior written notice from Lessor to Lessee.
- I. If any Car, while in the possession of Lessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ("DV") for such Car, Lessee shall notify Lessor within sixty (60) days following the date of the occurrence of such damage ("Damage Date"). If Lessee fails to notify Lessor within sixty (60) days of the Damage Date, Lessor has the right to engage an independent appraiser to inspect such Car to determine the extent of such damage. Regardless of whether or not Lessee has notified Lessor of the damage pursuant to this Subsection, Lessee shall remit to Lessor an amount equal to the DV of such Car within thirty (30) days of receipt of an invoice from Lessor.
- J. Any agreement between Lessee and any other party with respect to the Cars ("Third Party Agreement(s)") shall be void without Lessor's prior written approval if such Third Party Agreement affects the Revenues earned by the Cars, provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.
- K. Lessor and Lessee agree to cooperate with and to assist each other in any reasonable manner requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Cars, provided, however, that this shall not affect their respective obligations under this Section 7.

8. Possession and Use

- A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent the Cars are customarily used in the railroad freight business. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement pursuant to which Lessor's obligations thereunder are or become secured by the Cars which are the subject of this Agreement. Accordingly, following notice to Lessee from any such secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Agreement), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party.
- B. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars shall at all times be used and

operated under and in compliance with the laws of the jurisdiction in which the same are operated and in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Lessor or Lessee may in good faith and by appropriate proceedings, contest the application of any such act, rule, regulation or order in any reasonable manner at the expense of the contesting party.

- C. The use of the Cars shall be limited to use by a rail common carrier and the Cars shall always bear the reporting marks of a rail common carrier. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor. During the term of this Agreement, the Cars shall at all times be registered in the Official Railway Equipment Register and the UMLER.
- D. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim arising through it, on, or with respect to the Cars or any interest therein, or in this Agreement or Schedule thereto, except those created for the benefit of Lessor or any owner or secured party referred to in Subsection 8.A. hereinabove. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

9. Default

- A. The occurrence of any of the following events shall be an event of default:
 - (i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten (10) days after the date any such payment is due;
 - (ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ten (10) days thereafter;
 - (iii) The filing by or against the Lessee of any petition or the initiation by or against the Lessee of any proceeding: a) for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder; or b) under any bankruptcy, reorganization, receivership, insolvency, moratorium or other laws relating to the relief of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors, compositions of indebtedness, or extensions of indebtedness;
 - (iv) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency;

- (v) Any action by Lessee to discontinue rail service on all or a portion of its track or to abandon any of its rail properties.
- B. Upon the occurrence of any event of default hereunder, without limiting Lessor's rights and remedies otherwise provided by law which shall be available to Lessor in addition to the following rights and remedies (no right or remedy of Lessor being exclusive but all such rights and remedies being available at all times to Lessor and Lessor in any case being entitled to recover all costs, expenses and attorneys' fees incurred by Lessor in enforcing its rights and remedies hereunder), Lessor may, at its option, terminate this Agreement and recover damages and/or may:
- (i) Proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof, and/or
 - (ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate; and thereupon Lessor may enter upon any premises where the Cars may be located and take possession of the Cars and henceforth hold, possess and enjoy the same free from any right of Lessee. Lessor shall, in addition, have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to that date, together with Lessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof.

10. Expiration or Early Termination

A. Expiration

Upon the expiration of this Agreement with respect to any Car, Lessee shall promptly return such Car to Lessor as follows:

- (i) If some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to the Lessee's railroad tracks subsequent to the time of expiration. Lessee shall, at Lessor's option, provide, with respect to any Car described on any Schedule which is either on the Lessee's railroad tracks at the time of expiration or is subsequently returned to Lessee's railroad tracks, up to one hundred twenty (120) days free storage on its railroad tracks from either the date of expiration or the date the last Car on such Schedule is returned to Lessee's railroad line subsequent to the time of expiration, whichever date is later.
- (ii) At the option of Lessor, either Lessee or a contractor chosen by Lessor shall, at Lessee's expense, remark the Cars as set forth in Subsection 10.C. of this Agreement. Lessee shall not remove Lessee's railroad marks from any Car without the prior

written consent of Lessor. After remarking, Lessee shall, at Lessor's option, use its best efforts to load the Cars with freight and deliver them to a connecting carrier for shipment.

- (iii) If some or all of the Cars are to be delivered to Lessor at a location other than Lessee's tracks, the cost of assembling, delivering, storing, and transporting each Car to such location shall be borne by Lessor. Lessee shall bear the expense of remarking such Cars.

B. Early Termination

Upon the early termination of this Agreement with respect to any Car, whether pursuant to Section 9, Subsection 7.E. or Subsection 7.F. hereof, Lessee shall promptly return such Car to Lessor as follows:

- (i) If some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to the Lessee's railroad tracks subsequent to the time of early termination. Lessee shall, at Lessor's option, provide, with respect to any Car described on any Schedule which is either on the Lessee's railroad tracks at the time of early termination or is subsequently returned to Lessee's railroad tracks, up to one hundred twenty (120) days free storage on its railroad tracks from either the date of early termination or the date the last Car on such Schedule is returned to Lessee's railroad line subsequent to the time of early termination, whichever date is later.
- (ii) At the option of Lessor, either Lessee or a contractor chosen by Lessor shall, at Lessee's expense, remark the Cars as set forth in Subsection 10.C. of this Agreement. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor. After remarking, Lessee shall, at Lessor's option, use its best efforts to load the Cars with freight and deliver them to a connecting carrier for shipment.
- (iii) If some or all of the Cars are to be delivered to Lessor at a location other than Lessee's tracks, the cost of assembling, delivering, storing, and transporting each Car to such location shall be borne by Lessee. Lessee shall bear the expense of remarking such Cars.

- C. Remarking, with respect to each Car, shall include the following: a) removal of existing mandatory markings and all company logos of Lessee; b) complete cleaning subsequent to the removal of markings and company logos as designated by Lessor; c) application of new mandatory markings and company logos; and d) any transportation involved in moving each Car to and from a suitable work area to perform the remarking set forth in this Section.

11. Indemnities

- A.** LESSEE SHALL DEFEND, INDEMNIFY AND HOLD LESSOR HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, DESTRUCTION OR LIABILITY WITH RESPECT TO THE CARS WHICH IS OCCASIONED BY THE FAULT OF LESSEE, OR WHICH OCCURS WHILE THE CARS ARE IN LESSEE'S POSSESSION OR CONTROL, OR IN THOSE INSTANCES IN WHICH THE INTERCHANGE RULES WOULD ASSIGN RESPONSIBILITY FOR SUCH LOSS, DAMAGE, DESTRUCTION, OR LIABILITY TO LESSEE.
- B.** EXCEPT AS PROVIDED IN SUBSECTION 11.A., AND EXCEPT FOR THOSE CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS OR EXPENSES FOR WHICH LESSEE SHALL BE RESPONSIBLE AS SET FORTH IN THIS AGREEMENT, LESSOR SHALL DEFEND, INDEMNIFY AND HOLD LESSEE HARMLESS AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF OR TO THE CARS, USUAL WEAR AND TEAR EXCEPTED, AND ANY CLAIM, CAUSE OF ACTION, DAMAGE, LIABILITY, COST OR EXPENSE WHICH MAY BE ASSERTED AGAINST LESSEE WITH RESPECT TO THE CARS, INCLUDING USE, MAINTENANCE, REPAIR, REPLACEMENT OR OPERATION OF THE CARS OR THE CONDITION OF THE CARS (WHETHER DEFECTS, IF ANY, ARE LATENT OR ARE DISCOVERABLE BY LESSOR OR LESSEE).

12. Representations, Warranties, and Covenants

Lessee represents, warrants and covenants that:

- A.** Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and, insofar as is material to Lessor's rights under this Agreement, has the corporate power, authority and, is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.
- B.** The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound, except as provided in Section 8 hereinabove.
- C.** There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee such that Lessee's ability to perform its obligations hereunder would be materially and adversely affected.
- D.** There is no fact which Lessee has not disclosed to Lessor in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligation under this Agreement.

13. Inspection

Lessor shall have the right to enter any premises where the Cars may be located at any time during normal business hours for the purpose of inspecting and examining the Cars to ensure Lessee's compliance with its obligations hereunder.

14. Miscellaneous

- A.** This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that Lessee may not without the prior written consent of Lessor, assign this Agreement or any of its rights hereunder or sublease any Cars to any party, and any purported assignment or sublease in violation hereof shall be void.
- B.** Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor or its assignees in connection with the acquisition or financing or use of the Cars in order to confirm the financing parties' interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 8 of this Agreement.
- C.** It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint sale or venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars, except as a Lessee only.
- D.** No failure or delay by Lessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Lessor nor shall any waiver or indulgence by Lessor or any partial or single exercise of any right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
- E.** This Agreement shall be governed by and construed according to the laws of the State of California and jurisdiction of any action with respect to the Agreement shall be in the courts located in California.
- F.** Lessee shall notify Lessor as soon as is practicable of any accident connected with the malfunctioning or operation of the Cars, including in such report, where available, the time, place and nature of the accident and the damage caused.
- G.** Lessee shall also notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car.

- H. Lessee shall furnish to Lessor promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.
- I. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, or when transmitted and received by telex, addressed to the president of the other party at the address set forth herein or at such other address as to which any party shall notify the other party.
- J. The obligations and liabilities of Lessor and Lessee hereunder shall survive the expiration or earlier termination of this Agreement.
- K. This Agreement represents the entire Agreement. This Agreement shall not be modified, altered, or amended, except by an agreement in writing signed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ITEL RAIL CORPORATION

By: *[Signature]*

Title: President

Date: November 20, 1986

HARTFORD AND SLOCOMB RAILROAD COMPANY

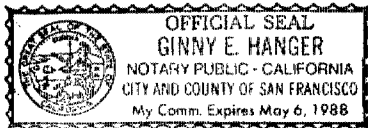
By: *[Signature]*

Title: President

Date: November 26, 1986

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 20th day of November, 1986, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Ginny E. Hanger
Notary Public

STATE OF ALABAMA)
) ss:
COUNTY OF HOUSTON)

On this 26 day of November, 1986, before me personally appeared C. F. Fischer III, to me personally known, who being by me duly sworn says that such person is President of Hartford and Slocomb Railroad Company, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jean Thompson
Notary Public

EQUIPMENT SCHEDULE NO. 1

Itel Rail Corporation hereby leases the following Cars to Hartford and Slocomb Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of October 15, 1986.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions		Doors Width	No. of Cars
				Inside Width	Height		
XM	50', 100-Ton Plate C boxcars, 15" End-of-Car Cushioning	77198 - 77249	50'6"	9'6"	11'1"	12' Plug	52

ITEL RAIL CORPORATION

By: 

Title: President

Date: November 20, 1986

HARTFORD AND SLOCOMB RAILROAD COMPANY

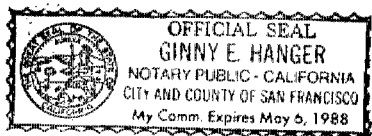
By: 

Title: President

Date: November 26, 1986

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 20th day of November, 1986, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Equipment Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Ginny E. Hanger
Notary Public

STATE OF ALABAMA)
) ss:
COUNTY OF HOUSTON)

On this 26 day of November, 1986, before me personally appeared C. F. Fischer III, to me personally known, who being by me duly sworn says that such person is President of Hartford and Slocomb Railroad Company, that the foregoing Equipment Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Joan Thompson
Notary Public